Supreme Court

OF THE

United States

October Term, 1903.

NO. 401

Martin Daly,

Plaintiff in Error,

vs.

Charles Elton,

Chief of Police of the City of Los Angeles.

BRIEF AND ARGUMENT ON BEHALF OF DEFENDANT IN ERROR.

This is a case in error to the Supreme Court of the state of California, to review a judgment of that court denying the petition of plaintiff in error to be released from the custody of the defendant Charles Elton, chief of police of the city of Los Angeles, who detained him under a commitment issued by a justice of the police court of that city.

Statement of the Case.

The petition of plaintiff in error alleged substantially as follows:

That the petitioner is imprisoned by Charles Elton, chief of police of the city of Los Angeles, and that said imprisonment is illegal. That the pretext of petitioner's arrest and detention is a warrant issued out of the police court of said city upon a complaint charging the petitioner and others with the commission of a misdemeanor in erecting and maintaining, and causing to be erected and maintained, certain gas works and a certain gas tank, reservoir and receptacle, for the storage of gas outside of the limits of a certain district in the city of Los Angeles. [tr. p. 1, fols. 1-3.] That the petitioner was duly arraigned upon the said complaint, and thereupon demurred thereto on the ground that the said complaint did not show the commission of any act or acts which constituted a public offense. That said demurrer was overruled, and thereupon the petitioner pleaded not guilty. That, upon the trial of said petitioner, evidence was offered by the prosecution that the petitioner was, on the 6th day of March, 1902, acting as foreman, and was in charge, of certain men and laborers engaged in erecting and building certain gas works, and a certain tank, reservoir and receptacle for the storage of gas, and did then and there do and

perform work and labor thereon, and that said gas works, tank, reservoir and receptacle were situated and located within the city of Los Angeles and outside of the limits of the district hereinbefore referred to, and that the petitioner did then and there employ and control said laborers and workmen, and that said gas works, tank, reservoir and receptacle were not, nor was any one of them, completed. [tr. p. 2-4, fols. 3-6.]

That on behalf of the defendant evidence to the following effect was offered:

That the petitioner was in charge of the erection of said works, gas holder, water tank, and was acting as foreman for Davis & Farnum Manufacturing Company. That said company was a corporation organized under the laws of the state of Massachusetts, and was erecting said gas holder and water tank for the Valley Gas & Fuel Company, a California corporation, and that said last named company was erecting said works for and under a contract with Caroline W. Dobbins, upon certain lots, all of which were situated within the limits described in ordinance No. 6663 (new series), thereafter in said petition set forth in full. That said lots and premises were purchased by said Caroline W. Dobbins for the purpose of erecting thereon gas works in which gas might be made and manufactured for distribution in the city of Los Angeles, and that there

are no public works owned or controlled by said city for supplying the same with artificial light. That on the 1st day of November, 1901, said Caroline W. Dobbins made an application to the board of fire commissioners of said city for a permit to erect upon said premises a gas works. That said application was considered by said board on the 22nd day of November, 1901, and, upon a motion duly made and seconded that the application be granted three of said commissioners voted "aye" and one "no." That on the same day the Valley Gas & Fuel Company contracted with said Caroline W. Dobbins to build said gas works upon said premises, and that thereafter the work of erecting said gas works was commenced, and was peaceably prosecuted and continued until the 6th day of March, 1902, when the petitioner was arrested as aforesaid. That at said date work to the value of upwards of $25,000.00 had been done and performed upon said gas works. [tr. p. 4-6, fols. 6-9.] That on the 26th of August, 1901, the council of the city of Los Angeles passed an ordinance entitled, "An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles," being ordinance No. 6663 (new series) hereinbefore mentioned. That on the 25th day of November, 1901, the council of the city of Los Angeles passed an ordinance, No. 6779 (new series),

amending ordinance No. 6663 (new series) in respect to the district outside of which the erection or maintenance of gas works, gas tanks or reservoirs was prohibited. That on the 3rd of March, 1902, the council of the city of Los Angeles passed ordinance No. 7029 (new series), again amending ordinance No. 6663 (new series) with respect to the description of said district; said premises of Caroline W. Dobbins being within the district described in said ordinance No. 6663 (new series) wherein gas works were thereby permitted, but being outside of the district described in each of said ordinances No. 6779 (new series) and No. 7029 (new series), wherein gas works were permitted. [tr. p. 6-10, fols. 9-15.]

That on the 27th day of June, 1902, petitioner was found guilty and fined in the sum of $100, with the alternative sentence of imprisonment in the city jail until such fine was paid in the proportion of one day's imprisonment for every dollar of said fine. That said petitioner appealed from said judgment to the Superior Court of the state of California in the county of Los Angeles, which court affirmed said judgment. That pursuant to said judgment, the petitioner was, at the time of filing his petition in the Supreme Court of the state of California, in the custody of Charles Elton, chief of police of the city of Los Angeles, and was held by said Charles Elton (at said time) in violation of the provisions of the

Constitution of the United States. [tr. p. 10-11, fols. 15-16.]

That the complaint upon which petitioner was charged did not state a public offense, in that said ordinance No. 6663 (new series) is void and invalid, and is in violation of the provisions of the constitution of the state of California, and of the provisions of the Fourteenth Amendment of the Constitution of the United States, in that it is an attempt, on the part of the city of Los Angeles, to make and enforce a law which abridges the privileges and immunities of the citizens of the United States, in that it attempted to prohibit the erection or maintenance of gas works and the storage of gas within the city of Los Angeles outside of the district described in said ordinance, and that said business is not a nuisance, but is a lawful occupation, protected by the provisions of section 19, article 11 of the constitution of the state of California. [tr. p. 11-12, fol. 17.] That ordinance No. 7029 (new series) is void and invalid as against the vested rights acquired by said Caroline W. Dobbins prior to the adoption thereof. That said ordinance is in violation of the provisions of the constitution of the state of California, section 16, article I., providing that no law impairing the obligation of contracts shall ever be passed, and in violation of the provisions of the Constitution of the United States, section 10,

article I., prohibiting any state from passing any law impairing the obligations of contracts, and is in violation of the Fourteenth Amendment of the Constitution of the United States prohibiting any state from making and enforcing any law abridging the privileges or immunities of any citizen of the United States or depriving any person of life, liberty or property without due process of law. That said ordinance was passed in an attempt to foster a monopoly and to protect the Los Angeles Lighting Company, a California corporation, in the enjoyment of a monopoly in the business of manufacturing and distributing gas in the city of Los Angeles and for the purpose of discriminating against said Caroline W. Dobbins, and to prevent her from establishing and maintaining a gas works within the city of Los Angeles. That the said Caroline W. Dobbins claims that she has the right, by virtue of the ordinance passed by the city council of the city of Los Angeles on the 26th day of August, 1901, being ordinance No. 6663 (new series) and under and by virtue of the purchase by her, subsequent to the adoption of such ordinance, of certain lands within the district within which it was lawful to erect gas works by the provisions of said ordinance, and by virtue of a permit granted to her by the board of fire commissioners on November 22nd, 1901, and by reason of the ex-

penditure by her of large sums of money in the attempted erection of said gas works, to continue the erection of said gas works so commenced, but that the authorities of the said city threaten that if the petitioner should again engage in the erection of gas works upon said premises they will continue to arrest and imprison him as often as he shall engage in said work. [tr. p. 12-14, fols. 18-22.]

That there are within the limits of the city of Los Angeles 42.37 square miles of territory, within which limits there are large areas of unoccupied land, and many locations suitable for the purpose of erecting gas works. That within the limits of said prescribed district within which, by the terms of said ordinance No. 7029 (new series), it is made lawful to erect and maintain gas works, there are 1.24 square miles of territory. That the boundaries of said district are very irregular and are not determined by any natural lines or objects, nor with regard to the conditions of the population residing within said district, nor as to whether said district is densely or sparsely populated, nor as to whether there are any tracts of vacant land theren; but that certain of said boundary lines were fixed solely for the purpose of protecting certain gas works and receptacles for the storage of gas owned by the aforesaid Los Angeles Lighting Company,

and that said ordinance thereby discriminates in favor of said company and against said Caroline W. Dobbins. That in the city of Los Angeles, and without the limits of the district within which, under said ordinance No. 7029 (new series), it is lawful to maintain gas works, a large number of gas works are maintained and operated; a plant operated by the Southern Pacific Railroad Company for the purpose of supplying cars with gas, and also the gas works of the California Fruit Canners Association used for the purpose of supplying the works of said company with gas, and also divers private gas plants used for the purpose of supplying sundry persons with gas. That against none of these corporations or persons have the authorities of the city of Los Angeles enforced or attempted to enforce the provisions of said ordinance. That the district in which the gas works of the said Caroline W. Dobbins were being erected is and was a district devoted to manufacturing and commercial enterprises almost exclusively, and in said district there was, prior to the purchase of said property by said Caroline W. Dobbins, a soap factory, a wool pulling factory, three wineries, numerous oil wells, an iron foundary, a brass foundary, and an oil refinery. That in said district there was a great deal of vacant land. That immediately adjacent to the easterly line of

said district are railroad tracks and the Los Angeles river. That, prior to the granting of the permit by the board of fire commissioners to the said Caroline W. Dobbins, the said board and the members thereof visited said premises and the district surrounding the same, and having heard the protests of all persons who appeared before them, decided, by the granting of said permit, that said premises were a suitable place upon which to erect gas works. That since the passage of said ordinance, and while said proceedings were pending against the petitioner, the city council of the city of Los Angeles passed an ordinance creating a district within which it was lawful to erect and maintain oil refineries, and that the limits of said district came within less than one block of the premises upon which the said Caroline W. Dobbins was erecting said gas works, and there has in said district been erected a large oil refinery by permission of the municipal authorities of the city of Los Angeles. That the said gas works were being constructed of incombustible material and so firmly and substantially that there could be no danger from explosions, bursting or leakage. That all of the machinery in place therein is of the most approved pattern and in accordance with the latest devices known in the manufacture of gas, and said works can and will be operated by the use of said ma-

chinery and devices so that there will be no leakage or escape of odors, and the same will not create a nuisance or interfere in any way with the health, comfort, safety or welfare of the inhabitants of the district in which said gas works are located. [tr. p. 14-17, fols. 22-27.]

That said ordinance is in violation of the Constitution of the United States, in that it is an attempt upon the part of the city of Los Angeles to regulate commerce among the several states for the reason that the Davis & Farnum Manufacturing Company did, on the 17th day of September, 1901, at Waltham, in the state of Massachusetts, enter into a contract with the Valley Gas & Fuel Company to erect in the city of Los Angeles certain gas works, and the said Davis & Farnum Manufacturing Company, immediately upon the entering into of said contract commenced, at its manufactory in the city of Waltham, the construction of said gas works, and then and there prepared the necessary iron and steel to be used therein and forwarded the same by railroad transportation to the city of Los Angeles, and then and there employed the petitioner, who was then and there residing at Camden, in the state of New Jersey, to go to the state of California, and then and there engage in the work of erecting said gas works. That the petitioner came to the city of Los Angeles by virtue of said employment

and was engaged in said work at the time of his arrest under the complaint hereinbefore set forth. That the arrest of the petitioner and the other employees engaged in the erection of said gas works interfered with and prevented the said Davis & Farnum Manufacturing Company from carrying out their contract with the Valley Gas & Fuel Company, which said contract was protected by the provisions of the Constitution of the United States in reference to commerce between the several states. [tr. p. 17-18, fols. 27-28.]

Upon this petition a writ was issued and served upon Charles Elton, who made return thereto substantially as follows:

That he was the chief of police of said city of Los Angeles, and the authorized custodian of all prisoners committed by judgment of the police court of said city of Los Angeles. That on the 3rd day of March, 1902, the city council of the city of Los Angeles passed an ordinance No. 7029 (new series), which ordinance was duly signed and approved by the mayor, which went into effect on the 6th day of March, 1902, (being the ordinance amending ordinance No. 6663 (new series), and referred to in the aforesaid petition). That on the 6th day of March, 1902, a complaint was filed in the police court of said city charging the petitioner with the violation of said ordinance. That thereafter, on the 7th day of March, 1902,

said petitioner having been arrested on said charge, was duly arraigned in open court and entered his plea of not guilty. That on June 27th, 1902, said petitioner was duly tried upon said charge, and the cause being submitted, said petitioner was adjudged guilty and sentenced to pay a fine of $100, or in default of such payment to be imprisoned in the city jail in the proportion of one day's imprisonment for each and every one dollar of said fine. That thereupon a commitment was duly issued out of said court and placed in the hands of the respondent committing the petitioner to the custody of the respondent. That said petitioner appealed from the said judgment to the Superior Court of said Los Angeles county, and on the 28th day of June, 1902, said judgment was affirmed. That the respondent further made return that he (at the time of making said return) had said petitioner in his custody and detained said petitioner by virtue of said commitment, and that the fine imposed by such judgment had not, nor had any part thereof, been paid. That upon the hearing of said petition the petitioner was, by the Supreme Court of the state of California, ordered remanded to the custody of Charles Elton, chief of police of the city of Los Angeles. (*In re* Daly, 139 Cal. 216.) [tr. p. 19-33, fols. 30-55.]

The errors assigned by plaintiff in error are substantially as follows, to-wit:

That the Supreme Court of the state of California erred: (1) In deciding that ordinance No. 7029 (new series) was valid as to the rights of plaintiff in error acquired before the passage of said ordinance; (2) In deciding that said ordinance was a valid police regulation of the city of Los Angeles; (3) In deciding that said ordinance was not invalid as an unwarranted interference with the enjoyment of the property rights of the plaintiff in error acquired prior to the adoption of said ordinance, and as an impairment of the obligation of contracts made before the passage of said ordinance; (4) In deciding that said ordinance was not an invalid ordinance as abridging privileges and immunities of the plaintiff in error, or depriving him of property acquired prior to the adoption of said ordinance without due process of law.

That the matters charged in the complaint against plaintiff in error did not constitute a public offense.

That the matters testified to at the trial of said plaintiff in error did not constitute a public offense.

That the said police court had no jurisdiction to issue a warrant for the arrest of the plaintiff in error.

That the defendant in error had no authority to arrest or detain plaintiff in error.

That the Supreme Court of the state of California erred in not discharging the plaintiff in error upon the return of the writ of habeas corpus and in remanding the plaintiff in error to the custody of the defendant in error. [tr. p. 49-52, fols. 84-88.]

BRIEF OF THE ARGUMENT.

I.

In reviewing a judgment upon a petition for writ of habeas corpus discharging the writ and remanding the petitioner, the only question reviewable by this court is the question whether the plaintiff in error has been denied a right in violation of the constitution, laws or treaties of the United States.

Yick Wo v. Hopkins, 118 U. S. 356.
In re Wright, 29 Hun. 361.
Ex parte Sternes, 77 Cal. 156.
Ex parte McCullough, 25 Cal. 97.
Ex parte Grannis, 51 Cal. 375.
Powell v. Pennsylvania, 127 U. S. 678.
Cooley Cons. Lim., 6th Ed. p. 425.
In re Coy, 127 U. S. 732.
Ex parte Lennon, 166 U. S. 548.
Andrews v. Swartz, 156 U. S. 272.
Ex parte Belt, 159 U. S. 95.

II.

The enactment of the ordinance drawn in question was fully within the police powers of the city of Los Angeles.

Constitution of California, Sec. 11, Art XI.
Statutes of California, 1869-70, p. 815.
Charter of Los Angeles, Secs. 2, 25, 27 and 40.

Statutes of California, 1889, p. 458.
Dillon on Mun. Corp., 3rd Ed., Sec. 141.
Butchers' Union v. Crescent City, 111 U. S. 746.
Peel Split Coal Co. v. W. Va., L. R. A. 392.
Munn v. Illinois, 94 U. S. 113.
Westfield G. and M. Co. v. Mendenhall, 142 Ind. 538.
New Orleans Gas Co. v. Louisiana L. Co., 115 U. S. 650.
Tiedeman on Police Powers, Vol. II, p. 740.
Jamieson v. Indiana Natural G. & Oil Co., 28 N. E. 76.
Lanigan v. N. Y. Gas & L. Co., 71 N. Y. 29.
Ex-parte Lacy, 108 Cal. 326.
Crowley v. Christensen, 137 U. S. 86.

III.

The allegations of the complaint as to the unreasonableness of this ordinance are not sufficient to sustain a decision against its validity.

Slack v. Jacob, 8 W. Va. 612.
Harmon v. City of Lewiston, 46 Am. St. Rep. 893.
Darnelly v. Cabanns, 52 Ga. 212.
Wells v. Mayor, 43 Ga. 67.
State v. Schlenker, 51 L. R. A. 351.
People v. Cipperly (N. Y.), 4 N. E. 108.
In re Wilshire, 103 Fed. 620.
Barbier v. Connolly, 113 U. S. 27.

IV.

All rights in contracts and property are held subject to such regulations as may be made from time to time by the State for the protection of public health, comfort and safety.

Cooley Cons. Lim., 6th Ed. 707.

Mugler v. Kansas, 123 U, S. 669.

Corporation of Knoxville v. Bird, 12 B. J. Lea, 121.

City of Salem v. Maynes, 123 Mass. 372.

Barbier v. Connolly, 113 U. S. 27.

City of New Orleans v. Stafford, 21 Am. Rep. 563.

2 Story Cons. Lim., Sec. 1954.

Jamieson v. Ind. Natural G. & Oil Co., 28 N. E. 76.

V.

A municipality cannot in any manner barter away, part with or abridge its right to exercise the police powers delegated to it by the State.

Cooley Cons. Lim., 6th Ed., p. 341.

Russell on Police Powers, p. 88.

Davenport v. City of Richmond, 81 Va. 636.

Newson v. City of Galveston, 13 S. W. 368.

Northwestern Fertilizing Co. v. Hyde Park, 97 U. S. 659.

VI.

The ordinance complained of is not violative of the commerce clause of the Constitution of the United States.

Sherlock v. Alling, Adm'r., 93 U. S. 99.
United States v. E. C. Knight, 56 U. S. 1.
Railroad Co. v. Husen, 95 U. S. 465.

VII.

The motives of a legislative body in enacting a law cannot be inquired into by the courts.

Fletcher v. Peck, 6 Cranch 87.
Dodge v. Wolsey, 18 How. 371.
U. S. v. Des Moines R. R. Co., 142 U. S. 545.
Hing v. Crowley, 113 U. S. 703.

ARGUMENT.

I.

In reviewing a judgment upon a petition for a writ of habeas corpus discharging the writ and remanding the petitioner, the only question reviewable by this court is the question whether the plaintiff in error has been denied a right in violation of the Constitution, laws or treaties of the United States.

The case of Yick Wo v. Hopkins, was brought into this court on writ of error to the Supreme Court of the state of California. The plaintiff in error had petitioned that court for a writ of habeas corpus, alleging that he was illegally deprived of his liberty by the defendant in error, and it appeared from the return that he was held in custody by virtue of a sentence of the police court, whereby he was found guilty of a violation of certain ordinances of the city and county of San Francisco. It was contended on behalf of the plaintiff in error that these ordinances were unconstitutional; but the Supreme Court of California decided in favor of the validity of the ordinances and remanded the prisoner. In reviewing the decision of the state court, Mr. Justice Matthews, delivering the opinion of this court, said:

"In the case of the petitioner brought here by "writ of error to the Supreme Court of Califor- "nia, our jurisdiction is limited to the question "whether the plaintiff in error has been denied "a right in violation of the Constitution, laws "or treaties of the United States. The ques- "tion whether his imprisonment is illegal under "the constitution and laws of the state is not "open to us."

Yick Wo v. Hopkins, 118 U. S. 356, 365.

And we submit further that in determining the question of repugnancy to the Constitution or laws of the United States, this court can only consider such matters as should have been considered by the state court. This rule necessarily governs the exercise of appellate jurisdiction, and we therefore, submit that in determining the question whether the plaintiff in error has been denied a right in violation of the Constitution of the United States this court can take into consideration only matters appearing upon the face of the ordinance, together with such facts as the court takes judicial cognizance of.

"The court has no jurisdiction on habeas cor- "pus after conviction in criminal cases to re-try "question of fact upon which the correctness of "the judgment of the court in which the peti- "tioner was convicted depends. * * * So far as "the reasonableness or unreasonableness of the "ordinance depended on questions of fact, the "place for their trial was the court of the police 'justice, and the judgment of that court could "only be reviewed on appeal or writ of certiorari

" by the appellate court having jurisdiction to " hear such appeals."

In re Wright, 29 Hun. 361.

And in this case, so far as the reasonableness or constitutionality of the ordinance under consideration depends on questions of fact, the place for their trial was the police court, and the judgment of that court could only be reviewed on appeal, and those questions could not be re-tried by the Supreme Court of the state of California in a habeas corpus proceeding, or re-examined by this court upon writ of error.

" The functions of the writ of habeas corpus " do not extend beyond an inquiry into the juris- " diction of the court in which the judgment was " rendered against the prisoner, and the validity " on its face of the process under which he is held. " An attack upon the judgment is subject to the " rule applicable to collateral assault upon judg- " ments in other cases. When a court has ac- " quired jurisdiction, its subsequent proceedings, " however irregular, are not void. The record " of the court is conclusive as to all matters de- " cided by it and no evidence can be received to " contradict it upon a collateral attack. When " jurisdiction depends upon litigated facts, an " adjudication that the requisite facts exist is " conclusive evidence of jurisdiction until vacated " or set aside in a direct proceeding, and cannot " be contradicted upon a collateral attack."

Syllabus in *ex parte* Sternes, 77 Cal. 156.

" Establish the doctrine that the judgments " and orders of courts may be reviewed on habeas

"corpus upon the ground of error, and appeals "for the correction of errors may be dispensed "with in all cases in which the arrest or impris- "onment of persons is allowed. Every criminal "action, every civil action in which an arrest is "given, and every proceeding for a contempt "could be brought to the supreme court by writs "of habeas corpus. Not only that, but as already "suggested, inferior tribunals would be called "upon to review the judgments of superior tri- "bunals and tribunals of equal grade to inter- "fere with and review each others pro- "ceedings. Such a rule would render all "judicial proceedings amorphous and lead "to the utmost confusion and disorder. "It is well settled that habeas corpus can "be put to no such use, and that its "functions where the party who has appealed to "its aid is in custody under process, do not ex- "tend beyond an inquiry into the jurisdiction of "the court by which it was issued and the va- "lidity of the process upon its face."

Ex parte McCullough, 35 Cal. 97.

Ex parte Grannis, 51 Cal. 375.

In the case of Powell v. Pennsylvania, 127 U. S. 678, the question of the constitutionality of a law prohibiting the manufacture or sale of oleomargarine was involved. Upon the trial, the defendant offered to prove that the process of manufacture was clean and wholesome, that the article contained the same elements as dairy butter in slightly different proportions, and that the article of food so produced was, in all respects, as wholesome as butter made from pure cream; that

the oleomargarine which he was charged with having unlawfully in possession and selling had been manufactured prior to the passage of the statute complained of; but such evidence was excluded. In its opinion, affirming the judgment of the state court sustaining the validity of the statute, this court said:

"Where a party who is in confinement under "judicial process is brought up on habeas corpus, "health as to require for the protection of the "people the entire suppression of the business "rather than its regulation * * * are questions "of fact, and of public policy, which belong to "the legislative department to determine. And "as it does not appear upon the face of the stat- "ute or from any facts of which the court must "take judicial cognizance, that it infringes rights "secured by the fundamental law, the legislative "determination of those questions is conclusive "upon the courts. * * * The legislature of "Pennsylvania, upon the fullest investigation, as "we must conclusively presume, and upon rea- "sonable grounds, as must be assumed from the "record, has determined that the prohibition of "the sale * * * of any article * * * to take the "place of butter produced from unadulterated "milk, or cream from unadulterated milk, will "promote the public health, and prevent frauds "in the sale of such articles."

Powell v. Pennsylvania, 127 U. S. 678, 685.

"In the great anxiety on the part of our legis- "latures to make the most ample provision for "speedy relief from unlawful confinement, au- "thority to issue the writ of habeas corpus has "been conferred upon inferior judicial officers,

"who make use of it sometimes, as if it were a "writ of error, under which they might correct "the errors and irregularities of other judges "and courts, whatever their relative jurisdiction "and dignity. Any such employment of the writ "is an abuse.

"Where a party is in confinement under judi- "cial process is brought up on habeas corpus, "the court or the judge before whom he is re- "turned will inquire whether the court or officer "issuing the process under which he is detained "had jurisdiction of the case and acted within "that jurisdiction in issuing such process. If "so, mere irregularities or errors of judgment in "the exercise of that jurisdiction must be disre- "garded on this writ and must be corrected either "by the court issuing the process or on regular "appellate proceedings."

Cooley's Constitutional Lim., 6th Ed., p. 425.

In re Coy, 127 U. S. 732.

"The only question which can properly be "raised upon this writ is whether the circuit "court exceeded its jurisdiction in holding the "petitioner for a contempt and in imposing upon "him a fine therefor.

"We are not at liberty to consider the testi- "mony or to inquire whether the facts as they "appeared upon the hearing justified the action "of the circuit court. It is only upon the theory "that the proceedings and judgment of the court "were nullities that we are authorized to reverse "its action. It has been too frequently decided "to be now open to question, that a writ of "habeas corpus can not be made use of to per- "form the functions of a writ of error or an "appeal."

Ex parte Lennon, 166 U. S. 548, 41 L. Ed. 1110.

See also Andrews v. Swartz, 156 U. S. 272, 39 L. Ed. 422.

Ex parte Belt, 159 U. S. 95, 40 L. Ed. 88.

So we submit in this case that the constitutionality of the ordinance complained of must be determined from the face of the ordinance, and from any facts of which the court takes judicial cognizance, but without regard to allegations of other facts contained in the petition of plaintiff in error to the Supreme Court of California for a writ of habeas corpus.

II.

The enactment of the ordinance drawn in question was fully within the police powers of the City of Los Angeles.

The ordinance complained of (being ordinance No. 7029, new series) was one prohibiting the establishment or maintenance of gas works, or receptacles for the storage of gas, in the city of Los Angeles outside of a certain prescribed district. The enactment of this ordinance was fully within the police powers delegated to the city by the state.

Section 11 of Article XI. of the constitution of California provides that:

"Any county, city, town or township, may

make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws."

An act of the legislature of California, approved April 4th, 1870, relating to gas companies, gives authority to all municipal corporations in the state to grant to any gas company the privilege of laying down pipes in their streets and alleys, and, in section 4 thereof, provides that—

"They may also control the location and construction of works so that they may be erected in suitable localities to give the least discomforture or annoyance to the public." (Statutes of California, 1869-70, page 815.)

This act was expressly continued in force by subdivision 20, section 19, of the Political Code of the state of California.

The charter of the city of Los Angeles contains the following provisions:

Section 2. "The said corporation shall have the power * * * (Sub. 22) to make and enforce within its limits such local, police, sanitary and other regulations as are not in conflict with general laws, and are deemed expedient to maintain the public peace, protect property, promote the public morals, and to preserve the health of its inhabitants."

Section 25. "It may, by ordinance, declare what constitutes a nuisance, and provide for the abatement and removal thereof."

Section 27. "It (the council) shall by ordinance, regulate, and may prohibit, the keeping of gun powder, acids, or other explosive, combusti-

ble or inflammable material within the limits of the city, or any specified part thereof."

Section 40. "The council shall also have full power to pass ordinances upon any other subject of municipal control or to carry into effect any other powers of the municipality."

Charter of Los Angeles;

Stats. of Cal. 1889, p. 458.

From these provisions it will be seen that the city of Los Angeles has general police powers, and that such powers are, by the statutes of the state and the city charter expressly extended to the regulation and conduct of the business of manufacturing and distributing gas, and of the keeping of combustible or inflammable material within the city.

"Many powers exercised by municipalities fall "within what is known as the police power of the "state, and are delegated to them to be used for "the public good. Of this nature is the authority "to suppress nuisances, preserve health, prevent "fires, to regulate the use and storage of dan- "gerous articles, to establish and control mar- "kets and the like. * * * * Laws and or- "dinances relating to the comfort, health, con- "venience, good order and general welfare of the "inhabitants are comprehenisvely styled police "laws or regulations."

Dillon on Municipal Corporations, 3 Ed. Sec. 141, vol. 1, page 212.

Chancellor Kent, at page 340, Vol. II of his Commentaries, in speaking of the extent of police powers, says: "Unwholesome trades, slaughter "houses, operations offensive to the senses, the

"deposits of powder, etc., may all be interdicted "by law in the midst of dense masses of popula- "tion on the general and rational principle that "every person ought so to use his property as not "to injure his neighbors, and that private inter- "ests must be made subservient to the general "interest of the community," which is cited and approved in Butchers' Union etc. v. Crescent City, 111 U. S. 746, and Peel Split Coal Co. v. West Va., 17 L. R. A. 392.

It is within the police power to regulate all occupations and business enterprises which are of a *quasi*-public nature, or which may, if not restricted in their exercise, be injurious to the public health, safety, morals, or to the general welfare.

Accordingly, it has been held that the police power extends to regulation of the location and conducting of markets, laundries, bakeries, pawn-shops, dairies, warehouses, wharves, ferries, and railways.

"This brings us to inquire as to the principles "upon which this power of regulation rests, in "order that we may determine what is within, and "what is without, its operative effect. Looking "then to the common law, from whence came the "right which the constitution protects, we find "that when private property is 'affected with a "public interest, it ceases to be *juris privati* only.' "This was said by Chief Justice Hale more than "two hundred years ago, in his treatise "De por- "tibus Maris," 1 Harg. Law Tracts, 78, and has "been accepted without objection as an essential

" element in the law of property ever since. Prop-
" erty thus becomes clothed with a public interest
" when used in a manner to make it of public con-
" sequence, and affects the community at large.
" When, however, one devotes his property to a
" use in which the public has an interest, he, in
" effect, grants to the public an interest in that
" use, and must submit to be controlled by the
" public for the common good to the extent of
" the interest he has thus created. He may with-
" draw his grant by discontinuing the use; but,
" so long as he maintains the use, he must sub-
" mit to the control."

Munn v. Illinois, 94 U. S. 113, 126.

" The business of manufacturing and distribut-
" ing illuminating gas, by means of pipes laid in
" the streets of a city, is a business of a public
" character. It is the exercise of a franchise be-
" longing to the state. The services rendered
" and to be rendered for such grant are of a pub-
" lic nature."

Westfield Gas & Milling Co. v. Mendenhall, 142 Ind. 538.

" It is true, as suggested in argument, that the
" manufacture and distribution of illuminating
" gas by means of pipes or conduits placed, under
" legislative authority, in the streets of a town
" or city, is a business of a public character. Un-
" der proper management, the business contri-
" butes very materially to the public convenience,
" while, in the absence of efficient supervision, it
" may disturb the comfort and endanger the
" health and property of the community."

New Orleans Gas Co. v. Louisiana Lighting Co., 115 U. S. 650, 658.

The business of manufacturing and distributing illuminating gas is not only one of a *quasi*-public character, but, as indicated in the case last cited, is one which may, if not regulated, become injurious to the health, comfort or safety of the community in which it is carried on, and, for that reason, is within the police power of the state. This is true even though such business is perfectly lawful, and is not a nuisance *per se*.

Mr. Tiedeman in his work on "Police Powers," volume 2, at page 740, says:

"Where, therefore, certain trades and employ-
"ments which serve some useful purpose and add
"something to the world's wealth are harmful to
"the inhabitants of the locality in which they may
"be conducted; and the harm may be avoided al-
"together or considerably reduced by confining
"them to localities in which the population is
"sparse and the residences are few, it is alto-
"gether permissible to prohibit the prosecution
"of these trades in other localities * * * In
"the same way, may the manufacture of pressed
"hay, the maintenance of dairies, the cultivation
"of land within the limits of a town, and the
"storage of cotton and other combustible ma-
"terial, such as oil and gun powder, be prohibited
"in densely settled parts of the city, and the
"prosecution of such trades be confined to cer-
"tain less dangerous localities."

In the case of Jamieson v. Indiana Natural Gas & Oil Co., et al., 28 N. E. 76, involving the question of the constitutionality of an act of the legislature of Indiana prohibiting the use of an artificial pressure in pipe lines used for the transpor-

tation of natural gas of more than 300 pounds to the square inch, the court said:

"The question, as the record presents it, is one "of power. With questions of policy or expedi- "ency the courts have no concern. License tax "cases, 5 Wal. 462; Herrerich v. State, 101 Ind. "564. If a subject is within the legislative power, "the question whether that power is wisely or un- "wisely exerted is not a judicial one. * * * * "A distinctive and conspicuous feature of this "case is that the property upon which the statute "operates is dangerous and is of an extraordi- "nary species and nature. That natural gas is "a dangerous agency is a matter of common "knowledge; and hence courts take judicial no- "tice of that fact. We know, as the legislature "knew, and as every one knows, that natural gas "is in a high degree inflammable and explosive. "Surely, no court would require evidence to in- "form it that artificial gas will ignite and ex- "plode, or that gun powder and dynamite are "intrinsically dangerous; * * * * But we "need not at this place discuss this phase of the "subject at length for the adjudged cases very "clearly show that the courts will take judicial "notice of the qualities of such things as arti- "ficial gas, kerosene, gun powder, dynamite or "the like. Lanigan v. Gas Light Co., 71 N. Y. "29; Wood v. Insurance Co., 46 N. Y. 421; Com. "v. Peckham, 2 Gray 514; Schlicht v. State, 56 "Ind. 173; Frese v. State, 2 So. Rep. 1; State v. "Hayes, 78 Missouri 308; Lohman v. State, 81 "Ind. 15. * * * * We hold without hesita- "tion that natural gas is so dangerous that its "use may be made the subject of police regula- "tion. Decision after decision recognizes the "principle we have stated and upholds laws regu- "lating the use of property." (Citing cases.)

"The properties of the illuminating gas in or-
"dinary use, its inflammable and explosive char-
"acter, are well understood, and every person of
"mature mind and ordinary intelligence cannot
"be presumed to be ignorant of it."

Lanigan v. New York Gas and Light Co.,
71 N. Y. 29, 33.

That the city of Los Angeles has the power, under the provisions of the state constitution and of its charter, to regulate the location of business enterprises which are not nuisances *per se,* but the conduct of which may injuriously affect the public health, comfort or safety, has been specifically decided by the Supreme Court of California.

In the case of *ex parte* Lacy, 108 Cal. 326, which involved the validity of an ordinance of the city of Los Angeles prohibiting the maintenance of a steam carpet beating machine within 100 feet of any church, school house, residence or dwelling-house, the court, after quoting article XI., section 11, above set forth, stated:

"It will thus be observed that Los Angeles
"city is vested with certain powers by direct
"grant from the constitution, and that grant of
"power is not confined within narrow limits, but
"is broad and far reaching in its scope and ef-
"fect. Under this grant of power the city had
"the right to pass this ordinance, unless it is in
"conflict with general laws; and we know of no
"general laws which conflict with it, unless it
"can be said to be violative of those general
"principles of constitutional liberty which form

" the very foundation of both state and federal " constitution. We see nothing in the language "of this ordinance contrary to these great prin- " ciples of our government. We see nothing " there depriving petitioner of any fundamental " rights. In the exercise of its police and sani- " tary power the city has attempted to regulate " the business of beating carpets by steam power. " Under its constitutional grant it had the right " to regulate this business. The use of steam " power of itself, within municipal territory, has " always been recognized as the proper subject " of regulation; and, in addition here, it may well " be assumed that the dust and other disagree- " able and unhealthy matters arising in such " quantities from the beating of the carpets, as " would naturally be indicated by the use of steam " power, are a constant source of danger and " menace to the good health and general welfare " of the neighborhood where located.

" Conceding the business covered by the pro- " visions of this ordinance not to constitute a " nuisance *per se* and to stand upon different " grounds from powder factories, street obstruc- " tions and the like, still the case is made no bet- " ter for the petitioner. This is not a question of " nuisance *per se*, and the power to regulate is " in no way dependent upon such conditions. In- " deed, as to nuisances *per se*, the general laws " of the state are ample to deal with them. But " the business here involved may properly be " classed with livery stables, laundries, soap and " glue factories, etc., the class of business under- " takings in the conduct of which the police and " sanitary regulations are made to a greater or " less degree by every city in the country. And " in this class of cases it is no defense to the valid- " ity of regulation ordinances to say: 'I am com- " mitting no nuisance, and I insist upon being

"heard before a court or jury upon that question "of fact.' In this class of cases a defendant has "no such right. To the extent that it was ma- "terial in creating a valid ordinance we must as- "sume that such question was decided by the "municipal authorities and decided against the "petitioner and all others similarly situated."

Ex parte Lacy, 108 Cal. 326.

The ordinance in question does nothing more than restrict the erection and maintenance of gas works and gas receptacles to a certain district within the city—presumably the most suitable locality for such business. Such restriction is nothing more than a simple and necessary regulation of the business of manufacturing and storing gas. Considering the well known nature and character of illuminating gas, that it is highly inflammable and explosive, and considering further the equally well known fact that its manufacture is inseparably attended with noxious vapors and offensive odor, we submit that the business is one which may become a menace to the safety, health and comfort of the neighborhood in which it is carried on, and that it is, therefore, subject to police regulation.

"As to the enjoyment of property, the rule is "general that it must be accompanied with such "limitations as will not impair the equal enjoy- "ment by others of their property. *Sic utere tuo* "*ut alienum non laedas* is a maxim of universal "application. For the pursuit of any lawful "trade or business, the law imposes similar con- "ditions. Regulations respecting them are al-

" most infinite, varying with the nature of the " business. Some occupations, by the noise made " in their pursuit, some by the odors they en- " gender, and some by the dangers accompanying " them, require regulations as to the locality in " which they shall be conducted. Some by the " dangerous character of the articles used, man- " ufactured or sold, require, also, special quali- " fications in the parties permitted to use, manu- " facture or sell them."

Crowley v. Christensen, 137 U. S. 86, 90.

III.

The allegations of the Petition as to the unreasonableness of this ordinance are not sufficient to sustain a decision against its validty.

The petition alleges that the ordinance complained of is unreasonable, and sets forth the fact that the district described in the ordinance, from which gas works are excluded, is one devoted almost exclusively to manufacturing and commercial enterprises; also, that various private gas plants, operated in connection with other business enterprises, for the purpose of supplying them with gas, are permitted by the city to exist, unmolested, within the district where, by the terms of the ordinance, gas works and gas receptacles are prohibited. That the boundaries of said district are very irregular, and that the area of said district is 1.24 square miles while the

area of the whole city is 42.37 square miles. These facts are, however, we submit, insufficient to show the unreasonableness of the ordinance. It is well settled that objections made upon this ground are regarded with great circumspection by the courts, and such objections will be sustained only in very clear cases, because the power to select the subjects of legislation, within constitutional limits, is committed to the law-making branch of the government, and the decision of the question of the expediency or reasonableness of a law is necessarily involved in the exercise of the legislative discretion used in enacting the law.

"For our purposes we must assume that if a "state of facts could exist that would justify such "legislation it actually did exist when the statute "now under consideration was passed. For us "the question is one of power, not of expediency. "If no state of circumstances could exist to jus- "tify such a statute, then we may declare this "one void because in excess of the legislative "power of the state, but if it could, we must "presume it did.

"Of the propriety of legislative interference "within the scope of the legislative power, the "legislature is the exclusive judge."

Munn v. Illinois, 94 U. S. 113.

Peel Split Coal Co. v. West Va., 17 L. R. A. 389.

"The expediency or inexpediency of an act is "a question for the legislature and not for the "court. Whenever an act of the legislature can

" be so construed and applied as to avoid a con-
" flict with the constitution and give it the force
" of law, such construction will be adopted by the
" courts.

" Courts have no right to set aside, to arrest or
" nullify a law passed in relation to a subject
" within the scope of the legislative authority on
" the ground that it conflicts with their notions
" of natural rights, absolute justice or sound
" morality."

Slack et al. v. Jacob et al., 8 W. Va. 612.

" Under a general grant of power over nui-
" sances, town authorities have no power to adopt
" an ordinance declaring a thing a nuisance which
" in fact is clearly not one, but in doubtful cases
" depending upon a variety of circumstances re-
" quiring judgment and discretion their action is
" conclusive."

Harmon v. City of Lewiston, 46 Am. St. Rep. 893.

" When a town council is authorized by law to
" do a particular act at its discretion, the courts
" will not control this discretion and inquire into
" the propriety, economy and general wisdom
" of the undertaking, or into the details of the
" manner adopted to carry the project into exe-
" cution."

Darnelly v. Cabanns, 52 Ga. 212.

Wells v. Mayor, 43 Ga. 67.

" That the constitutionality of a statute ought
" not to be made to depend on the finding of a jury
" on the facts of a case is manifest. If the plain
" provisions of the constitution have been vio-
" lated, or if the act cannot be said to be a proper

"exercise of the police power, in view of the "facts of which judicial notice may be taken, then "the duty of declaring the act invalid is clear. "But in the absence of such finding the act "stands."

State v. Schlenker (Ia.) 51 L. R. R. 351.

"But the defendant takes the broader ground "that the legislature cannot, under the constitu- "tion, prohibit the sale of milk from healthy "cows which in the natural state falls below the "standard fixed by the act unless such milk or "the articles made from it are in fact unwhole- "some or dangerous to public health. How is "that question of fact to be determined? The "court cannot take judicial notice whether the "milk below the standard is or is not unwhole- "some or dangerous to public health. Is that to "be a question for the jury? If so, a court must "charge a jury in each case if they find milk be- "low the standard to be unwholesome, then the "statute is constitutional; if they find it whole- "some, then the statute is unconstitutional. Evi- "dently a constitutional question cannot be set- "tled, or rather unsettled, in that way. The con- "stitutionality would vary with the varying "judgment of juries. Either then the legislature "can, under the constitution, forbid the sale of "milk below a certain standard, whether such "milk be in fact wholesome or not, or else they "cannot do this whether that milk be in fact "wholesome or not. If they may fix a standard, "they must judge whether or not milk below that "standard is wholesome. The courts cannot re- "view that judgment."

People v. Cipperly (N. Y.) 4 N. E. 108.

In the case of *in re* Wilshire, 103 Fed. 620, an

ordinance of the city of Los Angeles prohibiting the erection of advertising signboards of a greater height than six feet, was attacked on the ground that it was unreasonable. The judge in his opinion said:

"I entertain a good deal of doubt in respect to "the reasonableness of the maximum limitation "placed upon the structures in question by the "municipal authorities of the city of Los An-"geles, but the fact that this doubt exists is suffi-"cient reason for the court to decline to adjudge "the ordinance invalid. It is only in clear cases "that such a judgment should be given."

Even if plaintiff's contention as to the unreasonableness of this ordinance, as presented in the state court, had any merit, we submit that, after having been considered by that court, it cannot be urged or considered here. The question of the unreasonableness of an ordinance is one properly left to the decision of the state court. As was said by Mr. Justice Field, in the case of Barbier v. Connolly, 113 U. S. 27:

"Our jurisdiction is confined to a consideration "of the federal question involved, which arises "upon an alleged conflict of the 4th section (of "the ordinance) in question with the 1st section "of the 14th amendment of the Constitution of "the United States. * * The provision is purely "a police regulation within the competency of "any municipality possessed of the ordinary "powers belonging to such bodies. And it would "be an extraordinary usurpation of the authority "of a municipality if a federal tribunal should un-

"dertake to supervise such regulations. It may be "a necessary measure of precaution in a city "composed largely of wooden buildings like San "Francisco, that occupations, in which fires are "constantly required, should cease after certain "hours at night until the following morning; "and of the necessity of such regulations the mu- "nicipal bodies are the exclusive judges; at least "any correction of their action in such matters "can come only from state legislation or state "tribunals."

Barbier v. Connolly, 113 U. S. 27.

There is nothing on the face of the ordinance showing that it is unreasonable or oppressive, but, on the contrary, it is, by its terms, applicable to all persons alike, and, so far as can be judged from the description of the district set forth therein, outside of which gas works or gas receptacles may not be erected or maintained, the territory contained in such district is an extensive one.

Since then the ordinance is free from patent defects, and its reasonableness has been sustained by the state courts, the highest judicial tribunal will not go behind that decision.

IV.

All rights in contracts and property are held subject to such regulations as may be made from time to time by the state for the protection of public health comfort and safety.

The contention of plaintiff in error, as evidenced by his petition for a writ of habeas corpus, is that the grant of the permit by the board of fire commissioners to Caroline W. Dobbins for the erection of gas works upon her premises and the work performed by her and on her behalf on said premises and the expenditures made by her in the attempted erection of said gas works thereon, conferred vested rights upon Caroline W. Dobbins and resulted in a contract between her and the city of Los Angeles, and that said ordinance abridged or took away said rights and impaired the obligations of said contract, and that said ordinance abridged or attempted to abridge the privileges, immunities of Caroline W. Dobbins and of the petitioner, as the employe, of said Caroline W. Dobbins and of her said contractors, in that it prevented the erection and completion of said gas works.

The contract which plaintiff in error assumes to exist between Caroline W. Dobbins and the city is one arising out of the grant by the board of fire commissioners of a permit for the erection of the gas works. The per-

mit in question was granted in the exercise of the police power for the protection of property from fire, under an ordinance requiring every person proposing to establish or conduct a livery stable, blacksmith shop, gas works, or any factory where power other than animal or water power is used, to first obtain a permit from the fire commissioners therefor. The effect of the permit was simply to remove the restriction upon the use of property imposed by the ordinance, and to give to the owner of the property the privilege of using it just as he might if no such restriction existed. The grant of such a permit can in no sense be deemed to be the grant of a franchise, or of a property right, and therefore no contractual obligations can spring out of it. After receiving such a permit the owner of property is in no better position to claim that the city is estopped to impose regulations prohibiting the use of the property contemplated by the permit, than he would be if the ordinance requiring the procurement of a permit had never existed.

Furthermore, if this ordinance is within the scope of the police power of the city, as we have shown to be the case, whatever contracts or rights are held by plaintiff in error or by Caroline W. Dobbins, they must be subject to this power.

Mr. Cooley, in his work on constitutional limitations, in discussing the police power of the

states, especially with respect to the impairment of obligations of contracts by the exercise of that power, says:

"All contracts and all rights, it is declared, are "subject to this power; and not only may regula- "tions which affect them be established by the "state, but all such regulations must be subject "to change from time to time, as the general well- "being of the community may require, or as the "circumstances may change, or as experience "may demonstrate the necessity.

"Perhaps the most striking illustrations of the "principle here stated will be found among the "judicial decisions, which have held that the "rights insured to private corporations by their "charters, and the manner of their exercise, are "subject to such new regulations as from time to "time may be made by the state with a view to "the public protection, health and safety, and "in order to guard properly the rights of other "individuals and corporations. Although these "charters are to be regarded as contracts, and "the rights assured by them are inviolable, it "does not follow that these rights are at once, "by force of the charter contract, removed from "the sphere of state legislation, and that the "charter implies an undertaking, on the part of "the state, that in the same way in which their "exercise is permissible at first, and under the "regulations then existing and those only, may "the corporators continue to exercise their "rights, while the artificial existence continues.

"The obligation of the contract by no means "extends so far; but, on the contrary, the rights "and privileges which come into existence under "it are placed upon the same footing with other "legal rights and privileges of the citizen, and "subject in like manner to proper rules for their

"due regulation, protection and enjoyment."

Cooley Cons. Lim., 6th Ed. 707.

"It cannot be supposed that the states intend-
"ed by adopting that amendment (the 14th), to
"impose restraints upon the exercise of their
"powers for the protection of the safety, health
"or morals of the community. * * * The
"principle that no person shall be deprived of life,
"liberty or property without due process of law,
"was embodied, in substance, in the constitution
"of nearly all, if not all, of the states at the time
"of the adoption of the Fourteenth Amendment;
"and it has never been regarded as incompatible
"with the principle,—equally vital because es-
"sential to the peace and safety of society,—that
"all property in this country is held under the
"implied obligation that the owner's use of it
"shall not be injurious to the community." * *

"A prohibition simply upon the use of prop-
"erty for purposes that are declared by valid
"legislation to be injurious to the health, morals
"and safety of the community, cannot in any just
"sense be deemed a taking or an appropriation of
"property for the public benefit. Such legisla-
"tion does not disturb the owner in the control or
"use of his property for lawful purposes, nor
"restrict his right to dispose of it, but is only a
"declaration by the state that its use by any one
"for certain forbidden purposes is prejudicial to
"the public interests."

Mugler v. Kansas, 123 U. S. 669.

In the case of the Corporation of Knoxville v. Bird, 12 B. J. Lea, 121 (Tenn.), the defendant was arrested and convicted for the violation of an ordinance prohibiting the erection of wooden buildings in a certain district. The defendant

contended that the ordinance was unconstitutional, on the ground that it impaired the obligations of his contracts with the lessor of the lot upon which his building was being erected and with the builders who had commenced and were engaged in the erection of the building thereon at the time the ordinance was adopted; and also on the ground that it impaired his vested rights. The court held that there was no merit in this contention, and in its discussion of the constitutional question thus raised, said:

"It is true the exercise of this power by the "city authorities tends in a considerable degree "to impinge upon and restrain the free use of "the property of parties living within the pre- "scribed limits, the highest idea of property be- "ing that over which man has complete dominion, "with which he may do as he pleases. But it is "an essential element of every organized society "that even this right is to be enjoyed in subordi- "nation to the general public interest of the whole "body. For the benefits conferred by the pro- "tection given by law, and the general advan- "tages received from organized society, this en- "tire freedom is subject to be abridged and reg- "ulated within certain bounds, only limited by "the requirements that private property shall not "be taken or appropriated for public use without "compensation being first made for the property "thus used. The defendant in this case has only "been required to submit his rights to the rule "that a man must enjoy them subject to such

"regulation as the interest of the society of "which he is a member may demand."

Corporation of Knoxville v. Bird, 12 B. J. Lea, 121.

And in the case of City of Salem v. Maynes, 123 Mass. 372, it was held that an ordinance providing that a wooden building should not be built within a certain distance of any other wooden building, applied to one for the erection of which a contract had been made and lumber bought and prepared before the ordinance took effect. In the case of City of New Orleans v. Stafford, 21 Am. Rep. 563, the court held that an act of the legislature providing that no private market should be kept within 12 squares of a public market in the city of New Orleans was not unconstitutional as taking away the property or vested rights of those keeping, and holding licenses to keep, private markets within the prescribed limits at the time of the passage of the act.

"The fourteenth amendment of the United "States constitution is not designed to interfere "with the power of the state sometimes termed "its 'police power' to prescribe regulations to "promote the health, peace, morals, education "and good order of the people."

Barbier v. Connolly, 113 U. S. 27.

"All property and vested rights of individuals "are subject to such regulations of police as the "legislature may establish."

2 Story Con. Sec. 1954.

"It is not too much to say that as against the "police power there is no such thing as a vested "right. * * * No investement, however great, "can so vest a right as to preclude the exercise "of a great governmental power, such as that "under which regulations for the protection of "the health and safety of persons are enacted. "This principle is supported by many decisions. "In Beer Co. v. Mass., 97 U. S. 32, it was said, "'If the public safety or public morals require "the discontinuance of a manufacture or traffic, "the hands of the legislature cannot be stayed "from providing for its discontinuance by any "inconvenience which individuals or corpora-"tions may suffer."

Jamieson v. Ind. Natural Gas & Oil Co., 28 N. E. 76, 79.

Applying the principles laid down in the foregoing decisions to the claim of the plaintiff in error that the ordinance in controversy is unconstitutional and void, because it takes away vested rights belonging to Caroline W. Dobbins, and impairs the obligations of a contract existing between her and the city of Los Angeles, and abridges the privileges and immunities of Caroline W. Dobbins and of the petitioner, we submit that no rights, property, contracts, privileges or immunities, can exist that are not subject to the police power, and that if, as we have shown to be the case, this ordinance is within the scope of the police power of the city, there is no merit in the contention of plaintiff in error. Furthermore,

as to any rights, property, privileges or immunities of Caroline W. Dobbins, it does not appear that the plaintiff in error has any legal interest in them. His petition shows that he was in charge of the erection of the gas works as foreman for Davis & Farnum Manufacturing Company, a Massachusetts corporation, which was erecting the gas works for the Valley Gas & Fuel Company, which had a contract with Caroline W. Dobbins. The employers of the petitioner made a similar attack upon the validity of this ordinance in the case of Davis and Farnum M'f'g. Co. v. City of Los Angeles, 189 U. S. 207, and this court said:

"In order to determine the exact property "rights at stake in the case under consideration "it should be borne in mind that this is not a bill "by Mrs. Dobbins, the owner of the land and of "the proposed gas works, to enjoin the "city from interfering with carrying out "the permit she had obtained to erect these "gas works, nor by the Valley Gas and Fuel "Company, with which she had a contract to "erect these works; but by a sub-contractor, "which had made a contract with the Gas and "Fuel Company to erect for it, and upon prem-"ises to be designated by Mrs. Dobbins, a water "tank and gas holder; and, without even alleg-"ing that the Gas and Fuel Company had refused "to carry out its contract, or pay to plaintiff "damages, or that Mrs. Dobbins had refused to "settle any claim the Gas and Fuel Company "might have against her, seeks to enjoin the city "of Los Angeles in the assumed right of Mrs.

" Dobbins from interfering with its servants and " employes, and from preventing plaintiff from " carrying out the work of erecting the water " tank and gas holder, and also to desist and re- " frain from enforcing its ordinances. It sets " up no contract of its own with the city which " the municipal ordinances have impaired, but a " contract of the city with Mrs. Dobbins, to which " it was no party, in which it had no direct in- " terest."

Davis and Farnum Mfg. Co. v. City of Los Angeles, 189 U. S. 218.

The interest of the plaintiff in error in any rights, contracts or privileges of Mrs. Dobbins that are alleged to be impaired by the ordinance in question is even more remote than was the interest of his employer, which this court has already held was "no legal interest" at all. So that, the question of the impairment of Mrs. Dobbins' contract, or the deprivation of any of her rights, or privileges, is altogether irrelevant in this case.

V.

A municipality cannot in any manner barter away, part with or abridge its right to exercise the police powers delegated to it by the state.

It has already been shown that the permit granted to Caroline W. Dobbins by the board of fire commissioners to erect the gas works did not constitute, or result in, a contract between her and the city and we now submit the proposition that no contract could be made by the city which would have the effect of disabling or abridging its police power.

"It would seem, therefore, to be the prevail-
"ing opinion, and one based upon sound reason,
"that the state cannot barter away, or in any
"manner abridge or weaken, any of those essen-
"tial powers which are inherent in all govern-
"ments, and the existence of which in full vigor
"is important to the well-being of organized so-
"ciety; and that any contracts to that end are
"void, upon general principles, and cannot be
"saved from invalidity by the provision of the
"national Constitution, now under considera-
"tion."

Cooley Cons. Lim., 6th Ed. p. 341.

"The general principle is that it is not within
"the power of a common council to bind its legis-
"lative capacities by any arrangement or stipu-
"lation so as to disable itself from enacting any
"laws that might be deemed essential for public
"good."

Russell on Police Powers, page 88.

In the case of Davenport v. City of Richmond, 81 Va. 636, the city council had conveyed to defendant's grantors certain premises near the outskirts of the city to be used as a powder magazine. A subsequent ordinance declared the said magazine dangerous to life and property and directed it to be removed, at the expense of the owner, to some more remote locality. Davenport claimed that the ordinance was invalid and unconstitutional, because it deprived him of vested rights and impaired the obligation of a contract entered into between the city and his grantors, and took from him his property without compensation. The court said:

"Upon the principles recognized by this court "in R. F. and R. R. Co. v. City of Richmond, 26 "Gratt., 83, we are of opinion that this position "is not well taken. In other words, that the "withdrawal of the privilege previously granted "to the defendants—to erect and maintain a "powder magazine within the city limits—was "a valid exercise of the police power with which, "to that extent, the city is invested by the legis-"lature, and with reference to which the privilege "was granted and accepted. And hence the in-"convenience of which the defendants complaint "*damnum absque injuria.*

"However difficult it may be, if it is possible "at all, to exactly define the limits of that power, "there is no doubt that it extends to the protec-"tion of the lives, health, morals and safety of all "persons in the community, and that it cannot, "by contract or otherwise, be parted with by a

"municipal corporation to which it may be dele-
"gated. * * * * * * * * * * * * * *

"It is sufficient to say that the storage of gun-
"powder in a city or town, being attended with
"danger, its regulation is a matter within the
"power of corporate authorities, and consequent-
"ly the judgment of the city council as expressed
"in the ordinance requiring the removal of the
"magazines in question, is conclusive upon the
"courts.

"The Hastings court, therefore, did not err in
"instructing the jury that 'the fact that the city
"of Richmond in 1866 sold to the defendants, or
"to those under whom they claim title, the site
"of the powder magazines, now ordered by the
"council to be removed, for the purpose or with
'the knowledge that the same was to be used
"for the erection of powder magazines, does not
"prevent the city council from passing the ordi-
"nance of August 17, 1882, if, in the judgment
"of that body, the safety or convenience of the
"people demands the removal of said mag-
"azines.'"

Davenport v. City of Richmond. 81 Va. 636.

In the case of Newson v. City of Galveston, 13 S. W. 368, the plaintiff was granted a permit under a city ordinance to establish and maintain a meat market at a particular location. Thereafter the city council so amended the ordinance under which plaintiff's permit was granted as to make it unlawful to conduct a meat market in the district in which plaintiff's market was situated. It was contended that the amended ordinance impaired his vested rights and the obligation of his con-

tract with the city. With reference to this contention the court said:

"Police powers possessed by such (municipal) "corporations cannot be fettered by contracts, "but must be left free to be exercised at all times "whether in conferring, or withdrawing privileges once conferred. If a license tax had been "paid for a year, this would not deprive the city "of the power to withdraw the privilege before "its expiration if the public welfare demanded it. "Much less would the fact that the city for a "time had received the tax and granted the privilege make it incumbent on it to continue to do "so. If appellant expended money in preparing "his private market place for the conduct of his "business, he did so with the full knowledge that "the city might at any time forbid the business "(market) to be there conducted."

Newson v. City of Galveston, 13 S. W. 368.

In the case of Northwestern Fertilizing Co. v. Hyde Park, 97 U. S. 659, it was held that a grant by the state to a private corporation of the privilege of manufacturing fertilizer could be abrogated by an ordinance of the village of Hyde Park to which general police power had been subsequently delegated by the state. That the fertilizing company could thus be compelled to abandon the works which it had erected and established at a cost of more than $200,000, and that the village ordinance was not such impairment of the obligation of the charter contract

between the company and the state as is forbidden by the constitution of the United States.

Even if it be assumed, therefore, that by the grant of the permit by the board of fire commissioners for the establishment of the gas works by Caroline W. Dobbins, the city authorities consented and agreed to the erection and maintenance of such works, yet it is clear that the city, by such consent, was not deprived of the right, under its police power, subsequently to prohibit the erection or maintenance of the same.

VI.

The ordinanc complained of is not violative of the commerce clause of the Constitution of the United States.

Plaintiff in error claimed in his petition that ordinance No. 7029 (new series) was in violation of the Constitution of the United States in that it was an attempt on the part of the city of Los Angeles to regulate commerce among the several states, for the reason that the Davis & Farnum Mfg. Co., his employer, a Massachusetts corporation, made a contract in that state with the Valley Gas & Fuel Co., a California corporation, which was the contractor with Caroline W.

Dobbins for the erection of the gas works, and that the said Davis & Farnum Co. prepared the necessary material at its factory in Massachusetts and delivered the same in Los Angeles and employed the plaintiff in error, who was then residing in New Jersey, to go to Los Angeles and engage in the work of erecting said gas works; that plaintiff in error was so engaged at the time of his arrest, and that the Davis & Farnum Mfg. Co. was thereby prevented from carrying out its contract with the Valley Gas & Fuel Co.

We submit that these facts do not show any attempted interference on the part of the city with interstate commerce. In all the cases in which the legislation of a state has been held to be void for interference with the commercial power of congress, "the legislation created, in the way of tax, license, or condition, a direct burden upon commerce, or in some way directly interfered with its freedom."

Sherlock v. Alling, Admr., 93 U. S. 99, 103.

The case cited was one in which this court considered the validity of a statute of Indiana allowing actions for torts resulting in the death of the person injured, which, it was alleged, if applied to cases of marine torts, would constitute a new burden upon commerce; and the court said:

"That statute imposes no tax, prescribes no "duty, and in no respect interferes with any reg-

"ulations for the navigation and use of vessels. "It only declares a general principle respecting "the liability of all persons within the jurisdic- "tion of the state for torts resulting in the death "of parties injured. And in the application of "the principle it makes no difference where the "injury complained of occurred in the state, "whether on land or on water. General legisla- "tion of this kind, prescribing the liabilities or "duties of citizens of a state, without distinction "as to pursuit or calling, is not open to any valid "objection because it may affect persons engaged "in foreign or interstate commerce. Objection "might with equal propriety be urged against "legislation prescribing the form in which con- "tracts shall be authenticated, or property de- "scend or be distributed on the death of its "owner, because applicable to the contracts or "estates of persons engaged in such commerce. "In conferring upon congress the regulation of "commerce, it was never intended to cut the "states off from legislating on all subjects re- "lating to the health, life, and safety of their "citizens, though the legislation might indirectly "affect the commerce of the country. Legisla- "tion, in a great variety of ways, may affect com- "merce and persons engaged in it without con- "stituting a regulation of it, within the meaning "of the Constitution."

Sherlock v. Alling, Administrator, 93 U. S. 103.

In granting to congress the power to regulate commerce among the states the police power of the states was not surrendered, and the fact that a police regulation indirectly affects commerce—as most police regulations must—does not bring

it into conflict with the power to regulate commerce. As was said in the case of United States v. E. C. Knight Co., 156 U. S. 1, 13:

"It is vital that the independence of the commercial power and of the police power * * * should always be recognized and observed, for while the one furnishes the strongest bond of union, the other is essential to the preservation of the autonomy of the states."

In the case of Railroad Co. v. Husen, 95 U. S. 465, 470, this court said:

"We admit that the deposit in congress of the power to regulate foreign commerce and commerce among states was not a surrender of that which may properly be denominated police power. What that power is, it is difficult to define with sharp precision. It is generally said to extend to making regulations promotive of domestic order, morals, health, and safety. As was said in Thorp v. The Rutland & Burlington Railroad Co., 27 Vt. 149, 'it extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the state. According to the maxim, *sic utere tuo ut alienum non laedas*, which, being of universal application, it must, of course, be within the range of legislative action to define the mode and manner in which every one may so use his own as not to injure others."

Railroad Co. v. Husen, 95 U. S. 470.

It is, by the decisions of this court, a well established principle that commerce between the states may be incidentally and legitimately affected by a state law passed under the police

powers of the state and in the exercise of its jurisdiction over persons and property within its limits for the security of the property, lives, health and comfort of persons.

And we submit that the fact that the materials for the construction of the gas works in question were prepared and sold in the state of Massachusetts, or the fact that the plaintiff in error was hired in the state of New Jersey to superintend the erection of said works in Los Angeles, has no bearing upon the question whether the city has the power of prescribing regulations governing the erection and maintenance of gas works.

VII.

The motives of a legislative body in enacting a law cannot be inquired into by the courts.

It is alleged in the petition that the ordinance referred to was adopted, not for the purpose of protecting any public interest or preserving any public right, but that it was suggested and formulated by the Los Angeles Lighting Company, and was adopted by the city council solely for the purpose of protecting that company in the enjoyment of a monopoly in manufacturing and distributing gas in the city of Los Angeles,

and for the purpose of hindering and frustrating the efforts of Mrs. Dobbins to carry on her lawful business. That courts cannot inquire into the motives which influenced members of the legislature in passing a law has been the settled rule of this court since the decision of the case of Fletcher v. Peck, 6 Cranch 87. In the case of Dodge v. Wolsey, 18 Howard 371, Mr. Justice Campbell said: "The courts cannot look to the corruption, the blindness, nor the mischievious effects of state legislation to determine its binding operation." And in the case of United States v. Des Moines R. R. Co., 142 U. S. 545, this court said: "Although it has sometimes been argued at the bar that the courts ought to inquire into the motives of the legislature when fraud and corruption are alleged, and annul their actions if the allegations were established, the argument has in no case been acceded to by the judiciary, and they have never allowed the inquiry to be entered into."

"The rule is general with reference to the "enactments of all legislative bodies, that the "court cannot inquire into the motives of the "legislators in passing them, except as they may "be disclosed on the face of the acts or inferable "from their operation considered with reference "to the condition of the country and existing "legislation."

Hing v. Crowley, 113 U. S. 703.

For the reasons and upon the authorities cited, we submit that the decision of the state court under review in this case contains no error justifying a reversal, and should be affirmed.

Respectfully submitted,

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